

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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USVALDO CONTRERA, FRANCISCO LOPEZ,  
PEDRO BATISTA, FABIAN HERRERA and  
ANTONIO REYES, individually and on behalf  
of all others similarly situated,

Plaintiffs,

Case No. 16-CV-03851  
(LTS) (GWG)

- against -

IRVING LANGER, E&M BRONX ASSOCIATES LLC,  
E&M ASSOCIATES, and GALIL MANAGEMENT, et al.

Defendants.

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**ORDER GRANTING MOTION FOR APPROVAL OF PROPOSED NOTICE OF  
SETTLEMENT AND CLASS ACTION SETTLEMENT PROCEDURE**

This matter comes before the Court on Plaintiffs’ Motion for Preliminary Approval of the Settlement and Class Action Settlement Procedure, which was originally filed with the Court on January 22, 2020 (Docket # 402). The terms of the settlement have been revised since the motion was originally submitted, and the current, operative version of the agreement, with notices, was filed with the Court on November 2, 2020 (Docket #428) (the “Settlement” or “Settlement Agreement”). Having reviewed the motion, and all documents and exhibits submitted therewith, as revised, the Court GRANTS approval of the notice of proposed Settlement pursuant to Fed. R. Civ. P. 23 and 29 U.S.C. § 216(b). Accordingly, it is hereby ORDERED that:

(1) Upon preliminary review, the Settlement reached by the parties, as set forth in the Motion and Settlement Agreement, including the allocation formula, attorneys’ fees, and other terms, is likely fair and reasonable to all involved, suffers from no obvious defects, was reached after arms-length negotiations between the parties, and constitutes a reasonable compromise of the claims and defenses in this matter;

- (2) The Parties are directed to perform according to the terms set forth in the Settlement Agreement;
- (3) For the reasons given in Docket # 406, the Court finds that giving notice to the class identified in Docket # 406 is justified by the parties' showing that the court will likely be able to certify that class for purposes of judgment on the proposed settlement pursuant to Fed. R. Civ. P. 23(e)(1)(B)(ii).
- (4) The proposed Notice of Pendency of the Class Action and Proposed Settlement Notices ("Notices"), at dkt # 429-4, and the Claim and Change of Address Forms at dkt #429-5, are hereby approved, are found to be reasonable means of providing notice under the circumstances, and, when completed, shall constitute due and sufficient notice of the Settlement to all persons affect by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law;
- (5) The Parties may make formatting and minor, non-substantive revisions to the Notices, Claim Form and Change of Address Form following the issuance of this Order as they deem appropriate and necessary and to also insert deadlines and dates consistent with this Order without necessity for further Court intervention;
- (6) The Parties are directed to have the Settlement Agreement, including all Exhibits, including Notices and the Claim Form, translated from English to Spanish within fourteen (14) Days of this Order;

***Settlement Administrator***

- (7) Class Counsel has designated, and the Court appoints, Settlement Services, Inc. ("SSI" or "Claims Administrator"), to be responsible for communicating with Class

Members, disseminating Notices, Claim Forms and Change of Address Forms, accepting and maintaining documents sent by Class Members, including Claim Forms and other documents relating to claims administration, and administering claims for allocation, according to the formula set forth in the Settlement Agreement and its attachments;

- (8) SSI's costs, which include the cost of notice and processing of claims, shall be paid from any unclaimed funds as provided for in the Settlement Agreement;

***Notice Procedure***

- (9) By no later than ten (10) days after entry of this Order, Defendants are to furnish to SSI, in electronic form, a list of all Class Members, identified by: (i) name, (ii) last known address, (iii) for Opt-in Plaintiffs, additionally, the address on their opt-in form, (iv) any addresses provided by Class Counsel to Defendants, (v) land line (if known), (vi) cell telephone number (if known), (vii) email address (if known), (viii) Social Security Number, (viv) dates of employment, (vv) job title(s) or description (i.e., superintendent, porter or handyman), and (vvi) number of actual weeks worked during the Class Period, using the calculation for work weeks set forth in Paragraph VI(A) of the Settlement Agreement ("First Spreadsheet");
- (10) Within seven (7) Days of receiving the First Spreadsheet from Defendants as outlined in Paragraph VI(A) of the Settlement Agreement, as well as any supplemental information from Class Counsel, the Claims Administrator shall utilize the U.S. Post Office's National Change of Address ("NCOA") database, to locate alternative mailing addresses for each Class Member plus any other database that the Claims Administrator deems appropriate to effectuate a robust search for

Class Members who may not have fixed addresses;

(11) Within fourteen (14) Days of receiving the First Spreadsheet from Defendants as outlined in Paragraph VI(A) of the Settlement Agreement, as well as any supplemental information from Class Counsel, the Claims Administrator shall provide Defendants' Counsel with a revised spreadsheet containing the following for each Class Member: (i) all original information received from Defendants' Counsel, (ii) all supplemental information received from Class Counsel, (iii) alternative information received through the NCOA search or any other search mechanism engaged by the Claims Administrator and (iv) identifying any purported Class Member that was included in the list as a result of Class Counsel's production ("Defendants' Counsel Spreadsheet");

(12) Within fourteen (14) Days of receiving the First Spreadsheet from Defendants as outlined in VI(C) of the Settlement Agreement well as any supplemental information from Class Counsel, the Claims Administrator shall provide Class Counsel with a spreadsheet containing the (i) name, (ii) job title(s), (iii) dates of employment, (iv) number of actual weeks worked during the Class Period, and (v) last 5 digits of each Class Member's Social Security number ("Class Counsel Spreadsheet"), as set forth in Paragraph (VI)(D) of the Settlement Agreement. For Named Plaintiffs and Opt-In Plaintiffs, the Class Counsel Spreadsheet shall include the address, telephone number(s) and e-mail address for Named Plaintiffs and Opt-In Plaintiffs;

(13) Within ten (10) Days after receipt of the Class Counsel and Defendants' Counsel Spreadsheets the parties shall meet and confer in a good faith effort to resolve any

disputes regarding (i) the propriety of the status of any individual identified in and/or omitted from the spreadsheets as a Class Member; (ii) whether any individual in the spreadsheets should be deemed a Class Member; and (iii) the accuracy of job title(s), dates of employment and/or weeks worked. The parties shall jointly provide the Claims Administrator with a spreadsheet containing these revisions (“Final Spreadsheet”), as set forth in Paragraph (VI)(E) of the Settlement Agreement. To the extent the Parties are unable to resolve their differences, they shall submit their positions to Magistrate Judge Gorenstein. The decision of Magistrate Judge Gorenstein concerning period/dates of employment shall be incorporated into the Final Spreadsheet. All final determinations to the issues in this section shall be forwarded to the Claims Administrator.

(14) Within forty-nine (49) Days of this Order or (ii) seven (7) Days of the Claims Administrator’s receipt of the Final Spreadsheet, or (iii) seven (7) days of the decision of Magistrate Judge Gorenstein pursuant to Paragraph (VI)(E) of the Settlement Agreement, whichever occurs the latest, the Claims Administrator shall perform preliminary calculations to determine each Class Member’s Estimated Net Settlement Payment using the method set forth in Paragraph VI(F) of the Settlement Agreement;

(15) For Named Plaintiffs, the Notice Packet shall include the Notice for Named Plaintiffs and the Change of Address Form. For Opt-in Plaintiffs, the Notice Packet shall include the Notice for Opt-In Plaintiffs and the Change of Address Form. For all Class Members who are not Named Plaintiffs or Opt-In Plaintiffs, the Notice Packet Shall include the Notice to Class Members and Claim Form;

- (16) Within seven (7) Days after the Claims Administrator has calculated each Class Members' Estimated Net Settlement Payment amount, the Claims Administrator shall mail (by first class mail) the appropriate Notice Packet to each Class Member at each address listed in the Final Spreadsheet. Notice Packets shall be mailed to each address identified for each individual Class Member;
- (17) Within seven (7) Days after the Claims Administrator has calculated each Class Members' Estimated Net Settlement Payment amount, the Claims Administrator shall send a text in English and Spanish to each Class Member, informing the Class Member that a Notice Packet was delivered;
- (18) For undeliverable Notice Packets, the Claims Administrator shall follow the procedures set forth in Paragraph VI(H) of the Settlement Agreement;
- (19) The Claims Administrator shall mail a replacement Notice Packet to any Class Member who requests one, as set forth in Paragraph VI(J) of the Settlement Agreement;
- (20) In the event any Class Member submits a timely Claim Form that the Claims Administrator determines is materially incomplete or deficient, the Claims Administrator (no later than seven (7) Days following the Claim Form Deadline) shall provide the Class Member with a letter requesting the information that was not provided and giving the Class Member fourteen (14) Days from the date the deficiency letter is mailed to the Class Member to correct the deficiencies and resubmit the document, as set forth Paragraph VI(K) of the Settlement Agreement;
- (21) For Class Members who are not Named Plaintiffs or Opt-In Plaintiffs and have not yet submitted a completed Claim Form, thirty (30) Days after the initial mailing of

the Notice Packet, the Claims Administrator shall: (a) mail the Reminder Postcard (Docket # 429-7); (b) transmit two text messages (one in Spanish and the other in English) and (c) make one phone call to each such Class Member if such Class Member's cellular/landline telephone number has been provided to the Claims Administrator, as set forth in Paragraph VI(I) of the Settlement Agreement;

***Class Members who are Not Opt-In Plaintiffs or Named Plaintiffs***

(22) For Class Members who are not Named Plaintiffs or Opt-In Plaintiffs, in order to be a Participating Claimant entitled to receive a Settlement Check, a Claim Form must be received by the Claims Administrator within ninety (90) Days of the initial mailing of the Notice Packet subject to one twenty-one (21) Day extension under the circumstances described in Paragraph VI(H) of the Settlement Agreement ("Claims Form Deadline");

(23) Any Class Member who is not a Named Plaintiff or an Opt-In Plaintiff and does not properly and timely submit a Claim Form shall be bound by all of the terms and provisions of the Settlement Agreement pertaining to the released claims as defined in the Settlement Agreement, including the release of such claims, whether or not such Class Member has objected to the Settlement Agreement;

(24) Any Class Member who submits a timely and valid Claim Form as set forth above shall be included in the New York and Federal Class, and shall be bound by all of the terms and provisions of the Settlement Agreement pertaining to the released claims as defined in the Settlement Agreement, including the release of such claims, whether or not such Class Member has objected to the Settlement Agreement and whether or not such Class Member participates in the Settlement by cashing his/her

check;

***Opt-In Plaintiffs and Named Plaintiffs***

(25) Named Plaintiffs and Opt-In Plaintiffs shall not be required to submit a Claim Form to be a Participating Claimant entitled to a Settlement Check under the Settlement Agreement. Named Plaintiffs and Opt-In Plaintiffs may submit the Change of Address Form to the Claims Administrator to update their address on file with the Claims Administrator;

(26) Named Plaintiffs and Opt-In Plaintiffs shall be included in the New York and Federal Class, and shall be bound by all of the terms and provisions of the Settlement Agreement pertaining to the released claims as defined in the Settlement Agreement, including the release of such claims, whether or not such Class Member has objected to the Settlement Agreement and whether or not such Class Member participates in the Settlement by cashing his/her check;

***Objections, Fairness Hearing and Motion for Final Approval***

(27) Class Counsel shall file their Motion for Judgment and Final Approval on or before April 19, 2021;

(28) The Court will hold a Fairness Hearing on the above-referenced settlement on May 3, 2021, at 4:00 p.m., in Courtroom 6B at the United States District Court, Southern District of New York, 500 Pearl Street, New York, New York 10007;

(29) Any Class Member may attend the Fairness hearing, as set forth in Question 20 of the Notices (Docket #429-5). Subject to the provisions of Paragraph X of the Settlement Agreement, and with permission from the Court, as described in Question 21 of the Notices, a Class Member may speak at the Fairness Hearing in



person or by counsel and may be heard, either in support of or in opposition of the fairness, reasonableness, and adequacy of the Settlement Agreement, the allocation formula, or Class Counsel's request for attorneys' fees and service awards;

(30) Any objection to the Settlement must be in writing and be sent to the Claims Administrator, through first class mail, postmarked or received on or before the Claims Form Deadline. Objections should be addressed to SSI Group, LLC, Re: Contrera Lawsuit, P.O. Box 1657, Tallahassee, Florida 32302-1794, or to any other address that SSI chooses in the United States and as printed on the Notice to the Class;

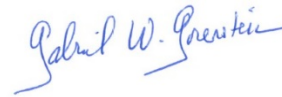
(31) The Claims Administrator will stamp the date received on the original and send copies of each objection, with supporting documents, to Class Counsel and Defendants' Counsel by email, to be delivered no later than three (3) days after receipt of the objection;

(32) Any Class Member who does not make his/her objection in the manner and by the time provided herein shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the fairness or adequacy of the proposed settlement as set forth in the Settlement Agreement or to the award of attorneys' fees to Class Counsel or enhancement payments to any Named Plaintiff, unless otherwise ordered by the Court;

(33) The date and time of the Fairness Hearing shall be set forth in the Notice but shall be subject to change by the Court without further notice to Class Members other than that which may be posted at the Court or on the Court's website or docket. The Court may approve the Settlement Agreement, if appropriate, without further notice

to the Class;

SO ORDERED THIS 4th day of November, 2020

A handwritten signature in blue ink, reading "Gabriel W. Gorenstein". The signature is written in a cursive, flowing style.

THE HONORABLE GABRIEL W. GORENSTEIN, U.S.M.J.